



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-108

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

The rule indicates that s. Adm 30.05 (11) (a) is being amended to comply with s. 227.10 (3) (a), Stats., which prohibits a rule from discriminating, either by its terms or in its application, based on various personal characteristics or attributes. However, that compliance appears to be at least partially undone by the creation of s. Adm 30.05 (11) (b). A fair reading of proposed par. (b) would indicate that, under the new provision, a charitable organization voluntarily participating in the payroll deduction program need not have a nondiscrimination policy in place if having one would effectively change the organization’s practices in a manner which would impair the organization’s right to engage in expressive activity protected by the First Amendment. Is that the rule’s intent? If it is the rule’s intent, it is noted that s. 227.10 (3) (a), Stats., does not expressly contemplate such an exception. The Legislature, in s. 227.10 (3) (a), Stats., has provided that administrative rules, which necessarily includes ch. Adm 30, may not discriminate in their application by reason of the characteristics identified therein.

In light of s. 227.10 (3) (a), Stats., under what statutory authority may the rule allow the discrimination contemplated in the creation of s. Adm 30.05 (11) (b)? Additionally, who will make the determination that taking a certain action or changing its current practices will impair an organization’s First Amendment rights? Is this something merely to be alleged by the organization and accepted by the Department of Administration (DOA)? Or will DOA conduct some form of inquiry to determine whether the organization’s First Amendment rights are impaired? If the latter is the case, what standards will be used to make that determination?

In any event, the meaning and application of par. (b) should be clarified and its statutory authority should be identified.

2. Form, Style and Placement in Administrative Code

The rule-making order should be divided into the following two SECTIONS:

SECTION 1. Adm 30.05 (11) is renumbered Adm 30.05 (11) (a) and amended to read:

...

SECTION 2. Adm 30.05 (11) (b) is created to read:

...

The underscoring should be deleted from par. (b). [See s. 1.06 (1), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

In s. Adm 30.05 (11) (b), the phrase “This provision shall” should instead refer to “Paragraph (a) does.”